

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
EUREKA DIVISION

KENNETH WAYNE ELLER,  
Plaintiff,  
v.  
CDCR,  
Defendant.

Case No. 16-cv-7139-NJV (PR)

## **ORDER OF DISMISSAL WITH LEAVE TO AMEND**

Dkt No. 3

Plaintiff, a state prisoner, has filed a pro se civil rights complaint under 42 U.S.C. § 1983. He has been granted leave to proceed in forma pauperis. (Doc. 6.)

## DISCUSSION

## Standard of Review

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). In its review the court must identify any cognizable claims, and dismiss any claims which are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek monetary relief from a defendant who is immune from such relief. *Id.* at 1915A(b)(1),(2). Pro se pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990).

Federal Rule of Civil Procedure 8(a)(2) requires only “a short and plain statement of the claim showing that the pleader is entitled to relief.” “Specific facts are not necessary; the statement need only “‘give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.’”” *Erickson v. Pardus*, 551 U.S. 89, 93 (2007) (citations omitted). Although

1 in order to state a claim a complaint “does not need detailed factual allegations, . . . a plaintiff’s  
2 obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief’ requires more than labels and  
3 conclusions, and a formulaic recitation of the elements of a cause of action will not do. . . .  
4 Factual allegations must be enough to raise a right to relief above the speculative level.” *Bell*  
5 *Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citations omitted). A complaint must  
6 proffer “enough facts to state a claim to relief that is plausible on its face.” *Id.* at 570. The United  
7 States Supreme Court has recently explained the “plausible on its face” standard of *Twombly*:  
8 “While legal conclusions can provide the framework of a complaint, they must be supported by  
9 factual allegations. When there are well-pleaded factual allegations, a court should assume their  
10 veracity and then determine whether they plausibly give rise to an entitlement to relief.” *Ashcroft*  
11 *v. Iqbal*, 556 U.S. 662, 679 (2009).

12 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: (1)  
13 that a right secured by the Constitution or laws of the United States was violated, and (2) that the  
14 alleged deprivation was committed by a person acting under the color of state law. *West v. Atkins*,  
15 487 U.S. 42, 48 (1988).

### 16 **Legal Claims**

17 Plaintiff alleges that defendant has failed to provide him with dentures.

18 Deliberate indifference to serious medical needs violates the Eighth Amendment’s  
19 proscription against cruel and unusual punishment. *Estelle v. Gamble*, 429 U.S. 97, 104 (1976);  
20 *McGuckin v. Smith*, 974 F.2d 1050, 1059 (9th Cir. 1992), *overruled on other grounds*, *WMX*  
21 *Technologies, Inc. v. Miller*, 104 F.3d 1133, 1136 (9th Cir. 1997) (en banc). A determination of  
22 “deliberate indifference” involves an examination of two elements: the seriousness of the  
23 prisoner’s medical need and the nature of the defendant’s response to that need. *Id.* at 1059.

24 A “serious” medical need exists if the failure to treat a prisoner’s condition could result in  
25 further significant injury or the “unnecessary and wanton infliction of pain.” *Id.* The existence of  
26 an injury that a reasonable doctor or patient would find important and worthy of comment or  
27 treatment; the presence of a medical condition that significantly affects an individual’s daily  
28 activities; or the existence of chronic and substantial pain are examples of indications that a

1 prisoner has a “serious” need for medical treatment. *Id.* at 1059-60.

2 A prison official is deliberately indifferent if he or she knows that a prisoner faces a  
3 substantial risk of serious harm and disregards that risk by failing to take reasonable steps to abate  
4 it. *Farmer v. Brennan*, 511 U.S. 825, 837 (1994). The prison official must not only “be aware of  
5 facts from which the inference could be drawn that a substantial risk of serious harm exists,” but  
6 he “must also draw the inference.” *Id.* If a prison official should have been aware of the risk, but  
7 was not, then the official has not violated the Eighth Amendment, no matter how severe the risk.  
8 *Gibson v. County of Washoe*, 290 F.3d 1175, 1188 (9th Cir. 2002). “A difference of opinion  
9 between a prisoner-patient and prison medical authorities regarding treatment does not give rise to  
10 a § 1983 claim.” *Franklin v. Oregon*, 662 F.2d 1337, 1344 (9th Cir. 1981).

11 Plaintiff seeks to be provided dentures. He has provided exhibits from when he was at San  
12 Quentin State Prison, but he is now at Valley State Prison and has provided no information  
13 concerning the status of his dentures request. The complaint is dismissed with leave to amend to  
14 provide more information. Plaintiff should identify specific defendants at Valley State Prison who  
15 have treated him for his dental problems and have denied or delayed his dentures.

## 16 CONCLUSION

17 1. The complaint is **DISMISSED** with leave to amend in accordance with the standards  
18 set forth above. The amended complaint must be filed within **twenty-eight (28) days** of the date  
19 this order is filed and must include the caption and civil case number used in this order and the  
20 words AMENDED COMPLAINT on the first page. Because an amended complaint completely  
21 replaces the original complaint, plaintiff must include in it all the claims he wishes to present. *See*  
22 *Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992). He may not incorporate material from  
23 the original complaint by reference. Failure to amend within the designated time will result in the  
24 dismissal of this case.

25 2. Plaintiff’s motion for an order (Docket No. 3) is **GRANTED** in that plaintiff may show  
26 this order to prison officials demonstrating that he has a deadline to file an amended complaint.

27 3. It is the plaintiff’s responsibility to prosecute this case. Plaintiff must keep the court  
28 informed of any change of address by filing a separate paper with the clerk headed “Notice of

1 Change of Address," and must comply with the court's orders in a timely fashion. Failure to do so  
2 may result in the dismissal of this action for failure to prosecute pursuant to Federal Rule of Civil  
3 Procedure 41(b).

4 **IT IS SO ORDERED.**

5 Dated: January 25, 2017

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7 NANDOR J. VADAS  
United States Magistrate Judge

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United States District Court  
Northern District of California